

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JOANN BLAKE, et al.,

No. C 06-1582 MMC

12 Plaintiffs,

**ORDER DENYING AS MOOT  
DEFENDANT BLUE SHIELD OF  
CALIFORNIA'S MOTION TO DISMISS;  
VACATING HEARING**13 v.  
14 BLUE SHIELD OF CALIFORNIA  
SEVERANCE PLAN and BRUCE G.  
15 BODAKEN,

16 Defendants

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18 Before the Court is defendant Blue Shield of California's ("Blue Shield") motion to  
19 dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, plaintiffs' initial  
20 complaint. On April 4, 2006, plaintiffs filed a First Amended Complaint ("FAC").21 A party may amend a pleading "once as a matter of course at any time before a  
22 responsive pleading is served." See Fed. R. Civ. P. 15(a).<sup>1</sup> "[A]n amended pleading  
23 supersedes the original, the latter being treated thereafter as non-existent." Bullen v. De  
Bretteville, 239 F. 2d 824, 833 (9<sup>th</sup> Cir. 1956), cert. denied, 353 U.S. 947 (1957). Further,  
24 the FAC no longer names Blue Shield as a defendant; rather, the FAC names a severance  
25 plan, specifically, the Blue Shield of California Severance Plan, and an individual  
26 plan, specifically, the Blue Shield of California Severance Plan, and an individual27  
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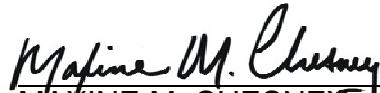
<sup>1</sup>A motion to dismiss is not a "responsive pleading." See Crum v. Circus Circus Enterprises, 231 F. 3d 1129, 1130 n. 3 (9<sup>th</sup> Cir. 2000).

1 defendant, Bruce G. Bodaken, as the administrator of the severance plan.

2 Accordingly, the Court hereby DENIES as moot Blue Shield's motion to dismiss, and  
3 VACATES the hearing scheduled for May 5, 2006.<sup>2</sup>

4 **IT IS SO ORDERED.**

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6 Dated: April 6, 2006

  
7 MAXINE M. CHESNEY  
United States District Judge

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27       <sup>2</sup>Blue Shield's motion for sanctions pursuant to Rule 11 remains as scheduled on the  
28 Court's May 5, 2006 hearing calendar. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384,  
395 (1990) (holding motion under Rule 11 may be heard following dismissal of action).